

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



74-2016

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

GEORGE BIDERMAN, et al, :

Plaintiffs-Appellants, :

-against- :

ROGERS C. B. MORTON, et al, :

Defendants-Appellees, :

-and- :

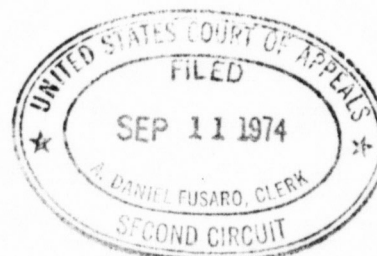
Docket No. 74-2016  
Calendar No. 292

CONSTITUTIONAL RIGHTS COMMITTEE  
OF KISMET, :

Defendant-Intervenor-  
Appellant. :

-----X

BRIEF FOR DEFENDANTS-APPELLEES  
CHARLES BARRAUD, THOMAS ROMEO  
AND ALBERT CARNES (THE BROOKHAVEN  
DEFENDANTS).



C. FRANCIS GIACCONE  
COUNSELOR AT LAW  
518 HAWKINS AVENUE  
LAKE RONKONKOMA, N. Y. 11779

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INTRODUCTION

There are two appeals from portions of an Order of the United States District Court for the Eastern District of New York, of July 19, 1974 (Dooling, J.). As authorized by Court Order, a typed brief is submitted.

Plaintiffs have instituted an environmental action to substantially restrict construction and vehicular traffic at the Fire Island National Seashore. The denial of a preliminary injunction to restrain construction was affirmed by this Court May 30, 1974. (73-2842).

Plaintiffs now appeal from so much of a subsequent Order as denied a motion for a preliminary injunction against the issuance of motor vehicle permits for use at the National Seashore, save for essential use to provide essential services. Although the motion is not so limited, plaintiffs' Memorandum of Law makes it clear that their motion is directed exclusively against the federal defendants

"Plaintiffs now seek relief against only the federal defendants pertaining to their control of federal land."

Plaintiffs' Memorandum, page 1.

The decision below is addressed exclusively to federal regulations as well. Therefore, the decision does not directly affect the Brookhaven defendants.

Intervenors appeal from so much of the Order as denies their motion for a preliminary injunction enjoining the federal defendants from refusing to issue motor vehicle permits on grounds not expressly specified in 36 C.F.R §7.20 and from interfering with vehicular traffic on Fire Island between the Robert Moses Causeway and the community of Kismet

along a certain route, all in the Town of Islip. This latter appeal does not concern Appellees Barraud, Romeo and Carnes, the Brookhaven defendants.

#### STATEMENT

As stated in the decision below, the evidence presented at the hearing indicates motor vehicle traffic has no significant effect on the environment at the Fire Island National Seashore.

"Fire Island is not now a prey to unregulated motor vehicle traffic. Motor vehicle traffic is not, as plaintiffs assert (Memo. p. 18), destroying the Seashore. That is not, on the evidence, the fact."

Decision, page 3.

No significant irreparable harm is occurring from vehicular traffic at the Seashore. The evidence failed to demonstrate compliance with this essential condition precedent to the granting of a preliminary injunction.

#### C O N C L U S I O N

THE ORDER SHOULD BE AFFIRMED.

Dated: September 10, 1974.

C. FRANCIS GIACCONE, P.C.  
Attorney for Brookhaven Defendants  
518 Hawkins Avenue  
Lake Ronkonkoma, N. Y. 11779  
(516) 588-2151



STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF SUFFOLK    )

Grace M. Shropshire, being duly sworn, deposes and says:

That deponent is not a party to the within action, is over eighteen years of age, and resides at Smithtown, New York. That on the 10 day of September, 1974, deponent served the within BRIEF FOR DEFENDANTS-APPELLEES CHARLES BARRAUD, THOMAS ROMEO AND ALBERT CARNES upon the following attorneys for said parties in this action at the addresses set forth alongside each name, the addresses designated for that purpose, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

CLERK, UNITED STATES COURT OF APPEALS  
United States Court House  
Foley Square, Room 1702  
New York, N. Y. 10007

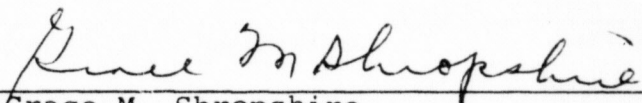
HAROLD J. FRIEDMAN, ESQ. (DAVID G. TRAGER ESQ., U.S. Attorney, and  
STEPHEN E. MESSINGER, ESQ., Summer Research Assitant, of Counsel),  
Attorneys for Federal Defendants, United States Courthouse  
225 Cadman Plaza East, Brooklyn, New York 11201

(ENGLISH CIANCIULLI, REISMAN & PEIREZ, ESQS., of Counsel)  
ROBERT M. CALICA, ESQ., Attorney for Defendant- Intervenor-Appellant  
CONSTITUTIONAL RIGHTS COMMITTEE OF KISMET  
1501 Franklin Avenue, Mineola, New York 11501

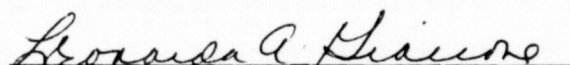
EDWARD S. RASKIN, ESQ.  
(FRANCIS G. CALDEIRA, ESQ., Islip Town Attorney, of Counsel)  
Attorney for Islip Defendants  
655 Main Street, Islip, New York 11751

FRANCIS V. GOGGINS, ESQ.  
(EDWARD MCGOWAN, ESQ. and J. STEWART McLAUGHLIN, ESQ., of Counsel)  
Attorneys for Saltaire and Ocean Beach Defendants  
383 East Main Street, Bay Shore, New York 11706

DONALD J. COHN, ESQ. and THOMAS H. JACKSON, ESQ.  
Attorneys for Plaintiffs  
One Rockefeller Plaza  
New York, N. Y. 10026

  
Grace M. Shropshire

Sworn to before me this  
10 day of September, 1974.

  
Notary Public

LEONARDA A. GIACCONI  
NOTARY PUBLIC, State of New York  
No. 52-6502910, Suffolk County  
Commission Expires March 30, 1976